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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-14656-2024
Date of Decision : 20.11.2024

Union of India and OthersPetitioners

Versus

No. 4456179X, Ex. Naik Tara Singh and anotherRespondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Angel Walia, Panel Counsel
for the petitioners-Union of India.

Ms. Roopan Atwal, Advocate for
Mr. Navdeep Singh, Advocate
for the respondent.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-Union of India, prays for the setting aside of the order dated 17.08.2022 (Annexure P-4), as passed by the learned Armed Forces Tribunal concerned, wherebys, the claim of respondent No. 1 for the grant of disability pension was allowed.

Factual Background

2. The respondent No. 1 was initially enrolled in the Sikh Light Regiment on 12.02.1977 and was discharged from service w.e.f. 28.02.2001. Thereafter, he was re-enrolled into Defence Security Corps (DSC) on 13.12.2001 and was discharged from DSC service w.e.f. 31.03.2016 after rendering 14 years, 3 months and 19 days of

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disability of 'Traumatic Effusion (RT) Knee with Fracture Lateral Condyle (RT) Tibia. At the time of discharge, his disability was assessed @ 30% for life.

3. The disability element claim of the respondent was rejected by the Competent Authority, thus on the ground that the supra disability was neither attributable to nor being aggravated by rendition of military service.

4. Feeling aggrieved, respondent No.1 filed O.A., before the learned Armed Forces Tribunal concerned, whereby he cast a challenge to the afore said rejection order. The said O.A., became allowed vide order dated 12.10.2022. The operative part of the said order is extracted hereinafter.

10. Considering the law laid down by the Hon'ble Supreme Court and also the attending circumstances, the rejection of the claim of the Applicant is set aside and the Applicant is thus held entitled to disability pension @ 50% as against 20% for life after being rounded off as per judgment of the Hon'ble Supreme Court in Civil Appeal 418/2012 Union of India Vs Ram Avtar decided on 10-12-2014 and the arrears are directed to be released by the Respondents within a period of three months from the receipt of a certified copy of this order by the counsel for the Respondents/OIC Legal Cell, failing which the arrears shall carry an interest @8% from the date of this order.

5. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the

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petitioner-Union of India has filed thereagainst the instant writ petition before this Court.

Inferences of this Court.

6. Before proceeding to adjudicate upon the instant *lis*, it is relevant to extract the contents of the opinion, as became recorded by the release medical board.

Disability	Relationship with service conditions	Reason
Traumatic Effusion (RT) Knee with Fracture Lateral Condyle @ Tibia	Not connected with military service.	Not connected with military service due to the injury sustained by the individual while on leave and not while performing the bonafide military duty.

7. A perusal of the records reveal that while respondent No. 1 was serving with 488 DSC Platoon, attached with 1FBSU, Air Force, C/o 56 APO, he sustained the afore injury due to road accident on 21.09.2015 during active service. Respondent No. 1 after completion of his assigned duties at about 2010 hrs was crossing road in front of Airport Gate No. 02, then a speeding car hit him from back and sped away. Respondent No. 1 fell down on road and sustained injury in his right knee. The injury of respondent No. 1 was severe in nature and the medical authorities after evaluation provided suitable treatment and on recovery, he was granted six weeks leave by the medical authorities. The medical board was held on 21.09.2015, which downgraded the petitioner in low medical cateogory A-3 w.e.f. 19.11.2015.

8. The Court of Inquiry was also ordered by the Commanding Officer of his unit to investigate the circumstances under which

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that no one is blameworthy for the said incident other than the unknown driver of the said car. Since the injury sustained was after completion of his duty shift, therebys, the same was recommended to be not attributable to service.

9. However, for the reasons to be assigned hereinafter, the supra recommendation is not accepted and the disability entailed upon respondent No. 1, is declared to become attributable to rendition of military service.

10. The reason for concluding so becomes grooved in the factum that the supra extracted opinion recorded by the Release Medical Board, will have an overriding effect, only if it was borne out from the records, that the respondent entailed the said injury while his not performing active military duty, whereas, it shall not have an overriding effect, if the records suggest that the said injury was entailed upon the respondent, during the performance of his active duty.

11. Since the records further reveal, that he sustained the injury owing to a road accident which occurred during his performing active military service, thereupons, even if at the relevant time, his shift on active duty, rather ended, yet the supra factum but cannot restrain the soldier from claiming relief. The reason for so stating becomes grooved in the trite factum that since after his performing his shift/active duty, thus, he was under respite from duty. Therefore, when even during respite, he was evidently stationed within the precincts of the military station, whereins, the disability became entailed upon him. In sequel,

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the entailment of disability upon the soldier rather during respite hours thus does not dis-entitle him to become a valid recipient of disability pension, nor the disability entailed upon the soldier during respite hours, can be stated to become neither aggravated by military duty nor it can be stated to become not attributable to rendition of military service.

Further arguments of the learned counsel for the petitioners.

12. The learned counsel for the petitioners-Union of India refers to the rendition(s) of various judgments by the Hon'ble Apex Court, wherebys, there has been a restriction of the apposite arrears for a period of three years. He further submits that in view of the expostulations of law made therein, the learned Tribunal concerned should have restricted the grant of arrears to the respondent for three years.

13. Initially, a reference is required to be made to paragraphs No. 5 and 6 of the verdict rendered by the Hon'ble Apex Court in case titled as ***Civil Appeal No. 5151-5152 of 2008 (Arising out of SLP (C) Nos. 3820-3821 of 2008 titled as Union of India and Others Vs. Tarsem Singh***, decided on 13.08.2008. The said paragraphs No. 5 and 6 become extracted hereinafter.

5. *To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted*

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even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.”

14. A reading of paragraph No. 5 of the verdict (supra) clearly underscores the fact that in case any claim is hit by the vices of delay and laches, thus ultimately affecting the apposite invested indefeasible right qua the army personnel, but relating only to payment or re-fixation of pay or pension, therebys, the said delayed claim, rather than becoming straightway rejected, thus, is required to be allowed, but with

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a fetter that the arrears of pension being restricted upto a period of three years prior to the date of filing of the writ petition.

15. In the said case in paragraph No. 6 thereof, the Apex Court declared that the High Court was not justified to direct the release of arrears of pension covering a period of 16 years and that too with interest.

16. The said view also appears to have been accepted in a judgment bearing Civil Appeal No. 274 of 2007 (Arising out of SLP (Civil) No. 881 of 2006) titled as Shiv Dass Vs. Union of India and Others, decided on 18.01.2007. The relevant paragraphs whereof are extracted hereinafter.

9. *In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. **If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.** The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.*

10. *In the peculiar circumstances, we remit the matter to the High Court to hear the writ petition on merits. If it is found that the claim for disability pension is sustainable in law, then it would mould the relief **but in no event grant any relief for a period exceeding three years from the date of presentation of the writ petition.** We make it clear that we have not expressed any opinion on the merits as to whether appellant's claim for disability pension is maintainable or not. If it is sans merit, the High Court naturally would dismiss the writ petition. The appeal is disposed of accordingly without any order as to costs.*

17. Be that as it may, since initially, a communication dated

27.09.2016 (Annexure P-1) was made to respondent No. 1 about his

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becoming encumbered with disability of 30 % for life and the same became declared to be neither attributable nor become aggravated by the service rendered by him in the Army. Moreover, when the said made communication is not being proven to be suffering from any falsity. However, yet respondent No. 1 did not prefer any appeal against the said rejection order.

18. Primarily, since respondent No. 1 was required to be promptly raising a motion against the rejection order dated 27.09.2016, through his either filing an appeal thereagainst or filing an O.A., before the Tribunal concerned. However, he filed original application thereagainst only in the year 2021, i.e. after almost about five years since the passing of the rejection order (supra). Therefore, in view of the declaration of law, as made in verdicts (supra) that upon a truthful communication becoming made to any member of the defence personnel, yet his omitting to promptly raise a challenge thereagainst. In sequel, when it is also expounded in the verdicts (supra) that therebys any belated challenge becomes hit by the vices of gross delays and laches, but yet when it is further declared in verdicts (supra) that the arrears of pension are to be restricted to three years.

19. Resultantly, this Court finds reason to interfere with the order passed by the learned Tribunal concerned, qua its restricting the arrears to three years preceding the date of filing of the O.A.

Final Order of this Court.

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20. In aftermath, this Court finds merit in the writ petition, and, with the above observations, the same is partly allowed.
21. The impugned order, as passed by the learned Armed Forces Tribunal concerned, is accordingly modified to the extent that the arrears of disability pension to be granted to respondent No. 1, are restricted to three years preceding the date of filing of the O.A. (supra).
22. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

20.11.2024
kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No